Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

THE TAFT LECTURES. — It was the privilege of the Law School, during the past month, to have as its distinguished guest former President William Howard Taft, now Professor of Law in the Yale Law School, who delivered a series of three lectures on "The Presidency: Its Powers, Duties, Responsibilities, and Limitations." Mr. Taft discussed the functions of our chief executive as viewed by one who has actually served in that capacity for four years, and not as one who theorizes at a distance. As the subject, from its nature, is one not covered by the authorities, the lectures were particularly valuable, not only as an adjunct to the course on Constitutional Law, but also to the student of general law and politics.

THE HARVARD LEGAL AID BUREAU. — The Harvard Legal Aid Bureau, incorporated last May for the purpose of rendering legal assistance gratuitously to persons unable to employ counsel, opened its office in Central Square, Cambridge, for its third year, on Wednesday, October 7. The membership for the coming year is made up as follows: A. C. Tener, President; C. B. Randall, Secretary; R. G. Bosworth, E. G. Fifield, E. W. Freeman, James Garfield, T. J. Hargrave, E. C. Kanzler, F. A. Nagel, T. H. Remington, Blair Reiley, H. Siefke, Jr., C. M. Storey, H. K. Urion, S. H. Wellman, R. W. Williams, from the Third Year Class; and F. G. Blair, R. W. Baker, F. L. Daily, T. W. Doan, W. W. Hodson, A. Jaretzki, Jr., P. V. McNutt, J. H. Philbin, W. F. Rogers, E. D. Smith, R. B. Wigglesworth, from the Second Year Class. These men are elected for the legal ability shown in their daily classroom work.

In the course of last year some two hundred and three cases were brought to the Bureau. Of these, fifteen went to trial. Fourteen were won and one was settled to avoid defeat. There is reason to believe that the usefulness of this organization will increase during the coming year.

THE STOPPING OF AMERICAN OIL SHIPS BY ENGLISH CRUISERS. — Fresh problems of international law arise almost daily as the European war progresses, — some of them of the utmost importance to the United States in the preservation of her neutrality. Recently three American vessels carrying oil to neutral ports were stopped by British cruisers.[1] Two of them had changed from German to American registry after the outbreak of hostilities. The exact facts in each incident have not at this writing been made public by our Department of State, but it is clear that whatever justification exists must have its basis in the nature of the cargo, the destination of the vessel, its registry, or its ownership. The matter is complicated by the imperfect success of the Declaration of London which codified the rules of international prize law, but which was never ratified by all the nations.[2]

---

[1] The boats referred to are the "Platuria," the "Brindilla," and the "John D. Rockefeller," operated by a German corporation in which the Standard Oil Company of New Jersey has the controlling interest. All were finally released.

[2] The Naval Conference of London met in 1908–09 to draft the rules of law which

Contraband of war may be either absolute or conditional. If absolute, it may be seized whenever destined for the belligerent country; but if conditional, it may be condemned only when actually bound for the military or naval authorities.[3] Now illuminating oil such as made up the cargoes of these vessels is clearly not the sort of commodity to which the name "absolute contraband" is given; namely, that which like certain explosives is useful only in war, but comes if at all within the famous definition of Grotius that whatever is useful "both in war and out of war" is conditional contraband.[4] In the Declaration of London fuel and lubricants are expressly named as conditional contraband,[5] and under this or the preceding test illuminating oil must probably be included, although the case would be much stronger for a petroleum product which could be used for motive power.

If the cargo is conditional contraband the fact that the vessels were *en route* between neutral countries is not conclusively a guarantee of immunity. Early in the nineteenth century the prize courts of England and America adopted the so-called doctrine of continuous voyage under which condemnation is justified when it appears that the voyage to the neutral is merely a cloak to disguise an ultimate destination for the cargo among the military or naval stores of the belligerent.[6] But this was by no means law universally, and the Declaration of London compromised by repudiating the doctrine of continuous voyage as applied to conditional contraband.[7] While, of course, the Declaration of London was never ratified by England, the fact that the Conference came together at her request to settle among other things this very question, and that the compromise was accepted by her representatives at the Conference, makes it fair to say that she should proceed with extreme caution in the matter of interrupting trade in conditional contraband between neutrals.[8] But apart from the Declaration of London, the doctrine of

should govern the new international prize court which the preceding Conference at The Hague had determined to establish. But since the Declaration of London was never finally adopted by either England or Germany, it is not binding. For a full report of and commentary upon the Conference, see the CORRESPONDENCE AND DOCUMENTS PRESENTED TO BOTH HOUSES OF PARLIAMENT BY COMMAND OF HIS MAJESTY, BRIT. BLUE BOOK, INTERNATIONAL NAVAL CONFERENCE MISC., No. 4 (1909), Cd. 4554. For the text of the Declaration in English, see 2 WESTLAKE, INT. LAW, 2 ed., p. 325. For the original French text, see 3 AMER. JOURN. INT. LAW (Supp.), 179.

[3] See The Peterhoff, 5 Wall. (U. S.) 28, 58.

[4] GROTIUS, DE JURE BELLI ET PACIS, Lib. III., c. 1, § 5. "*Sunt quæ et in bello et extra bellum usum habent.*"

[5] DECLARATION OF LONDON, Art. 24.

[6] The William, 5 C. Rob. 385. The Stephen Hart, 3 Wall. (U. S.) 559. Historically the doctrine was first applied to the distinct wrong of blockade running, but it was soon logically extended to the carriage of contraband. During the Civil War attention was focused to it by the illicit trade that was carried on with the Confederate States *via* the small island of Nassau just off the coast of Florida. Its origin and scope are ably discussed by Justice Elliott of the Supreme Court of Minnesota, in 1 AMER. JOURN. INT. LAW, 61. See also 24 HARV. L. REV. 167.

[7] DECLARATION OF LONDON, Art. 35. See BRIT. BLUE BOOK MISC., No. 4 (1909), 49. See also 8 AMER. JOURN. INT. LAW, 317.

[8] The instructions to His Majesty's representatives contained this sentence: "Any proposal tending in the direction of freeing neutral commerce and shipping from the interference which the suppression by belligerents of the trade in contraband involves, should receive your sympathetic consideration, and, if not otherwise open to objection, your active support." BRIT. BLUE BOOK MISC., No. 4 (1909), 23.

continuous voyage does not apply to these oil ships. There is little in the facts of the cases to indicate sufficiently actual complicity between the American shipper and the belligerent war department to warrant the holding up of presumptively neutral commerce. True, the objection that the ultimate destination is to be reached overland is specious, and opposed to the best recent authority.[9] But here the oil is to be mixed with the common stock of the vendee country, and the responsibility for the subsequent forwarding must be upon that nation. It is submitted that the voyage is not in any sense continuous unless there is complicity between the shipper and the belligerent authorities.[10]

So far as can be learned, the British government has not raised the issue of changed registry in these particular episodes, but the war cannot long continue before situations will arise that call for a decision as to how far a transfer from a belligerent to the American flag will protect shipping. Unfortunately the law in this regard is not free from ambiguity, but it seems to be focusing toward the principle that any transfer, even though involving an absolute change of ownership, if made for the purpose of escaping the consequences of belligerency, is void. Some of the Anglo-American cases have limited their inquiry to the determination of whether in substance any element of belligerent control or interest remained in the vessel after the transfer,[11] while others base their decision on the rule that the sale must not have been inspired by a desire on the part of the vendor to avoid the hazards of war.[12] The Declaration of London adopts the view that the transfer is void if made to evade the consequences to which an enemy vessel is exposed,[13] — a result that was influenced no doubt by the fact that the law of France and Russia has always been unequivocal that no transfer whatever would be recognized after the outbreak of hostilities.[14] Under this view it is considered no insult to the neutral flag to disregard the sale and condemn the ship, inasmuch as the fraudulent transfer has deprived the enemy of a fair means of exerting pressure on the belligerent. And as an eminent English authority has pointed out, the Declaration of London, although not obligatory, "carries a weight on the points determined in it which belongs to no private international code, and which cannot fail to exercise a great influence both on international practice and on international opin-

---

[9] See 1 AMER. JOURN. INT. LAW, 97, 100.

[10] So far as Denmark is concerned, towards which two of the ships were bound, it is not surprising that there has been a large increase in the importation of oil, inasmuch as the normal sources of supply in Russia and Roumania are now cut off. And to clinch the matter, it is said that Denmark has already assured England that she would rigidly enforce an embargo on contraband.

[11] The Benito Estenger, 176 U. S. 568; The Vigilantia, 1 C. Rob. 1; The Baltica, 11 Moore's P. C. 141.

[12] The Jan Frederick, 5 C. Rob. 128. Sir W. Scott says (p. 131), "This court has even allowed a change of property *in transitu* — where it had been done without any view of accommodation to relieve the seller from the pressure or prospect of war." The Minerva, 6 C. Rob. 396.

[13] DECLARATION OF LONDON, Art. 56. See also Art. 55.

[14] At the Naval Conference each nation presented a summary of the law as administered in her own prize courts. See PARLIAMENTARY PAPERS MISC., No. 5 (1909), France, 31; Russia, 56.

ion." [15] But whatever view is taken as to the elements necessary in change of ownership, with the oil ships there was admittedly no change of ownership whatever. They are the property of a German company in which the controlling interest is American, and even if in name the American corporation should take them over it would be difficult to satisfy a prize court that the belligerent interest had been permanently divested. It was palpably a change of registry solely for the purpose of gaining immunity and without a *bonâ fide* cutting off of the German interest, and in either aspect the transfer is void. It is submitted that the same should be true even where the ownership has throughout been completely American. If our capital entrusts itself to the protection of a foreign flag in times of peace for the purpose of obtaining compensatory advantages, it must endure the risks which are incident to such protection when war breaks out.[16] In regard to the belligerent ships which are now interned in some of our harbors, it must be borne in mind that nearly all of them have been subsidized by their respective foreign governments and are subject to conversion into auxiliary warships. They would therefore fall within the total disability of a foreign war vessel, the sale of which is always and under all circumstances void.[17] And even for a strictly private ship the sale of which is absolute and *bonâ fide* as between the parties, it would be difficult to establish that the sale was not directly induced by a desire to put it out of the reach of the warring nation for which it was fair prize; and this, it is submitted, would violate the Declaration of London, and thus tend to jeopardize American neutrality.

THE EVOLUTION OF THE CONTINGENT REMAINDER. — The Committee on Legislation of the Massachusetts Bar Association has proposed an act which, if successful in earning legislative approval, will serve to exterminate whatever vestige of technicality inherent in contingent remainders is now surviving in that jurisdiction.[1]

This eminently desirable result will have been centuries in attainment.[2] Originally, we are told, the creation of any unvested estate

---

[15] 2 WESTLAKE, INT. LAW, 2 ed., 255, 256.

[16] *Cf.* this issue of the REVIEW, p. 217. See also 2 WESTLAKE, INT. LAW, 2 ed., 169.

[17] The English practice makes this exception. See PARLIAMENTARY PAPERS MISC No. 5 (1909), 40. "*Si le navire est sous le contrôle d'un ennemi.*"

[1] The full text is to be found in the Report of the Committee on Legislation for 1914, p. 54. It is in part as follows: "A contingent remainder shall take effect, notwithstanding any determination of the particular estate, in the same manner as it would have taken effect if it had been an executory devise, or a springing or shifting use, and shall, like such limitations, be subject to the rule respecting remoteness known as the rule against perpetuities, exclusively of any other supposed rule respecting limitations to successive generations or double possibilities." The act is accompanied by an admirable "Explanatory Note," which is altogether persuasive and concise.

[2] On the general subject of contingent remainders, springing and shifting uses, and executory devises, see FEARNE, CONTINGENT REMAINDERS, especially vol. 1, 317–415, 490–569; LEAKE, LAW OF PROPERTY IN LAND, 2 ed., 32–43, 233–246, 252–268; WILLIAMS, SEISIN OF THE FREEHOLD, 169–202; WILLIAMS, LAW OF REAL PROPERTY, 22 Eng. ed., 306–411, 17 Int. ed., 410–463; JARMAN ON WILLS, 6 Eng. ed., 1352–1460.